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No. 82-123

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ANNIE MARY TIMMONS, PETITIONER,

versus

ROBERT C. ANDREWS, D. REESE WILLIAMS, WILLIAM H. TULLER, GROVER C. KIRBY, CHARLES H. THOMAS, JOE E. WINTER, JOHN T. CAMPBELL AND GRAYDON V. OLIVE, RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATUTORY PROVISIONS INVOLVED

Section 14-400.581 of the Code of Laws of South Carolina (1962) provides, in pertinent part:

> The governing body of any incorporated municipality or county in this State is hereby authorized to adopt building, housing electrical, plumbing and gas codes relating to the construction, livability, sanitation, erection, equipment, alteration, repair, occupancy or

removal of buildings and structures located within its jurisdiction and promulgate rules and regulations to implement such codes. . . . Such codes and regulations may only be adopted by reference to national, regional or model codes listed in Section 14-400.586 and to certain special provisions approved by the South Carolina Building Code Council.

Section 14-400.586 of the Code of Laws of South Carolina (1962) provides, in pertinent part:

> Municipalities or counties are authorized to adopt by reference only the latest editions of the following nationally known codes for regulation of construction within their respective jurisdictions: . . . Southern Standard Housing Code. . . .

Section 36-502 of the Code of Laws of South Carolina (1962) provides, in pertinent part:

> Whenever any municipality of this State finds that there exist in such municipality dwellings which are unfit for human habitation due to (a) dilapidation, (b) defects increasing the hazards of fire, accidents or other calamities, (c) lack of ventilation, light or sanitary facilities or (d) other conditions rendering such dwellings unsafe or insanitary, dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of such municipality, such municipality may exercise its police powers to repair, close or demolish any such dwelling in the manner herein provided.

Section 36-503 of the Code of Laws of South Carolina (1962):

> Upon the adoption of an ordinance finding that dwelling conditions of the character described in Section 36-502 exist within a municipality, the governing body of such municipality may adopt ordinances relating to the dwellings within such municipality which are

unfit for human habitation. Such ordinances may include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances;

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and all parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer or his designated agent at a place therein fixed not less than ten days nor more than thirty days after the serving of such complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(3) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order

(a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to repair, alter or improve such dwelling to render it fit

for human habitation or to vacate and close the dwelling as a human habitation or

(b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling;

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful";

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished; and

(6) That the amount of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred.

Section 17-1 of the Code of Ordinances for the City of Columbia (1969):

There is hereby adopted by and for the City the Southern Standard Housing Code 1973 Edition with the City Revision of Amendments thereto, recommended by the Southern Building Code Congress, which code is published in book form, which is referred to, incorporated herein and made a part hereof for all purposes, a copy of which code is filed of record in the offices of the City Clerk and Building Official.

Section 103.2 of the Southern Standard Housing Code, as amended by the City of Columbia:

> All dwellings, apartment houses, rooming houses, or buildings or structures used as such, which are unsafe, unsanitary, unfit for human habitation, or not provided with adequate egress, or which constitutes a fire hazard, or are otherwise dangerous to human life, or which in relation to the existing use constitute a hazard to safety or health, by reason of inadequate maintenance, delapidation, obsolescence, or abandonment, are severally in contemplation of this section, unsafe buildings. All such unsafe buildings are hereby declared illegal and shall be abated by repair and rehabilitation or by demolition in accordance with the following procedure.
>
> (a) Whenever a petition is filed with the Housing Rehabilitation office by a public authority, or by at least five residents of the municipality, charging that any dwelling is unfit for human habitation, or whenever it appears to the Housing Rehabilitation Official on his own motion that any dwelling is unfit for human habitation the Housing Rehabilitation Official shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and all parties in interest in such dwelling, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Housing Rehabilitation Official at a place therein fixed not less than ten (10) days, nor more than thirty (30) days after the serving of such complaint. That the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint and that the rules of evidence prevailing in Courts of Law or Equity shall not be controlling in hearing before the Rehabilitation Official.
>
> (b) If, after such notice and hearing, the Housing Rehabilitation Official determines that the dwelling

under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an Order.

(c) If the owner fails to comply with an Order to repair, alter, improve, or to vacate and close the dwelling, the Housing Rehabilitation Official may cause such dwelling to be repaired, altered, or improved, cause to be posted on the main entrance of any dwelling so closed a placard with the following words: "THIS BUILDING IS UNFIT FOR HUMAN HABITATION: THE USE OR OCCUPATION OF THIS BUILDING FOR HUMAN HABITATION IS PROHIBITED AND UNLAWFUL."

(d) If the owner fails to comply with an Order to remove or demolish the dwelling, the Housing Rehabilitation Official may cause such dwelling to be removed or demolished; and

(e) The amount of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the Housing Rehabilitation office shall be a lien against the real property upon which such cost was incurred.

(f) Complaints or Orders issued by the Housing Rehabilitation Official pursuant to this Code shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and cannot be ascertained by the Rehabilitation Official in the exercise of reasonable diligence and the Rehabilitation Official shall make an affidavit to that effect, then the serving of such Complaint or Order upon such persons may be made by publishing it once each week for two consecutive weeks in a newspaper printed and published in the City. A copy of such Complaint or Order shall be posted in a conspicuous place on the premises affected by the Complaint or Order. A copy of such Complaint or Order shall also be filed with the Richland County Clerk of Court and

such filing of the Complaint or Order shall have the same force and effect as other *lis pendens* notices provided by law.

ADDITIONAL STATEMENT OF THE CASE

Petitioner is the owner of seven parcels of real estate located in Columbia, South Carolina. These parcels have large buildings upon them which were once used as apartment buildings. Pursuant to his duties as established by state enabling legislation and local ordinance, the Housing Rehabilitation Official for the City of Columbia inspected these structures in 1971 and determined that they were unfit for human habitation. It was the duty of the Housing Rehabilitation Official to see that the buildings were made fit for human habitation or demolished. Although there is some dispute as to when Petitioner was first notified that the buildings would have to be repaired or demolished, both parties agree that she was given notice by 1972. A series of inspections and orders followed, which required Petitioner to repair or demolish the buildings, which had been evacuated. Petitioner never complied with these orders and in December of 1974 the City was investigating having the buildings demolished with the expense of demolition being applied to the property as a lien, all as allowed by the ordinance.

On December 31, 1974, Petitioner brought suit in the United States District Court of South Carolina to have the municipal ordinance described above declared unconstitutional as a taking without compensation, or, in the alternative, declared inapplicable to her buildings. The Respondents were all employees of the City of Columbia when the suit was initiated, and they were sued in their official capacities. The case was heard on July 28, 1980, without a jury, and an Order of Judgment in the City's favor was handed down

on August 12, 1980. The Fourth Circuit Court of Appeals affirmed the District Court decision on December 24, 1981.

REASONS FOR DENYING THE WRIT

The petition for writ of certiorari should be denied because (1) Petitioner has not established sufficient reasons for the granting of the writ, and (2) Petitioner has failed to comply with the Supreme Court Rules in the petition.

A. The petition for writ of certiorari should be denied because Petitioner has not established the special and important reasons required by Supreme Court Rule 17. Petitioner has not contented that the decision of the Fourth Circuit Court of Appeals is in conflict with either the decisions of other federal courts or the decision of any state court. Neither has Petitioner contended with specificity that the decision in question conflicts with applicable decisions of this Court.

Before addressing Petitioner's position, it is essential to establish precisely what issues were before the court below. As shown by her Complaint set out in Respondent's Appendix, Petitioner originally sued Respondents for injunctive relief and asked that the court determine whether the adoption of the provisions of the Southern Standard Housing Code confers authority upon the Respondents to condemn and demolish buildings in the City of Columbia, whether any such authority applies to buildings not being used as residences, and whether such a condemnation constitutes a taking without just compensation in violation of the State and Federal Constitutions (see Paragraph 3). The District Court found in its Conclusions of Laws that these were the sole issues involved in this case. (Appendix Page 16, Paragraph 2; all references are to Petitioner's latest Appendix.) The issues before the Court are confined to the events from 1971, when the buildings were first found

to be unfit for human habitation, to December of 1974, when this action was initiated to enjoin the demolition of those buildings.

Despite the narrow issues that were litigated in this action and the brief time period involved, Petitoner has included materials and arguments pertaining to numerous other disputes in her petition for writ of certiorari and appendix. Petitioner has been involved in extensive litigation with the City of Columbia for many years, over a number of different issues. For example, in her statement of the case, Petitioner cites several sections from a building code concerning non-conforming uses. (Petition Page 17.) Also, question numbers 5, 18, and 19 of her Questions Presented deal with non-conforming uses of property and zoning. However, these issues were decided by the Supreme Court of South Carolina in 1981 and are not before this Court. *Timmons v. Campbell, et al,* Opinion No. 81-MO-9 (S. C., filed January 27, 1981, mem.). Also, in the statement of the case, Petitioner lists a number of alleged violations of her rights beginning on Page 20. The incidents alleged in numbers 2 through 9 all occurred after the date this action began, and are therefore irrelevant. The District Court noted in footnote number one that Petitioner was apparently confusing the issues involved in her various suits. (Appendix Page 6.) These issues are not before this Court.

The issue primarily litigated below is whether Respondents had the authority to require Petitioner to repair or demolish her buildings. There is no question that this is allowed by state law and local ordinance, but Petitioner contends that it is a taking for which compensation is due. This issue was resolved by the Supreme Court of South Carolina in 1955 in the case of *Richards v. City of Columbia,* 227 S. C. 538, 88 S. E. (2d) 683. In *Richards* it was held that the predecessor to the ordinance in question was a

valid exercise of the police power and did not take property without just compensation.

The decisions of the District Court and the Court of Appeals are in accord with *Richards*. Paragraph 12 of the Conclusions of Law of the District Court is printed incorrectly in Petitioner's Appendix and should read as follows:

> In *Richards v. City of Columbia*, 227 S. C. 538, 88 S. E. 2d 683 (1955), the Court reviewed the question of whether the predecessor to the ordinance in question, which had essentially the same provisions, involved an impermissible taking of property for public use and without compensation, in violation of the state constitution. In upholding the constitutionality of the ordinance, the Court observed that . . . .

This decision was affirmed by the Court of Appeals. Therefore, there is no conflict between state and federal decisions in this instance and the granting of a writ of certiorari is unwarranted.

This is not a case in which the decision below conflict with applicable decisions of this Court. The District Court found that Petitioner's properties were unsafe, unsanitary fire hazards which were dangerous to human life in December of 1974 (Appendix Page 14, Paragraph 27); that the Respondents properly followed the procedures set out in the Southern Standard Housing Code for requiring the repair or demolition of unsafe buildings and that Petitioner failed to comply with orders to repair or demolish (Appendix Pages 14 and 15, Paragraph 28); that the provisions of the Housing Code are proper under the police power of a city to protect the safety and welfare of its citizens (Appendix Pages 15 and 16, Paragraph 31); that demolition of unsafe buildings under the Housing Code does not constitute a taking of property without compensation (Appendix Page 22, Paragraph 15). These findings of fact and legal conclu-

sions are consistent with applicable principles established by this Court. Petitioner has not cited any authority to the contrary. Her petition for a writ of certiorari is therefore inadequately substantiated.

The petition for a writ of certiorari does not establish sufficient reasons to invoke the Court's discretion to grant the writ. Rather, it is no more than a request that another court review the facts and render a decision thereon. The petition should therefore be denied.

B. The petition for writ of certiorari should be denied because Petitioner has failed to comply with the Supreme Court Rules in her petition. Rule 21(1) (a) provides that the statement of the questions presented for review should be short and concise and should not be repetitious. Petitioner presents twenty questions which fail to meet these requirements, and many of which do not relate to the issues involved in this action. Rule 21(1) (g) requires that Petitioner make a concise statement of the case. Instead, the petition contains a nine page statement which combines fact and argument. In addition, numerous pages of the Appendix have handwritten comments added to them. Pages twenty-five through thirty-three of the Appendix are further argument, pages thirty-four through thirty-five recite a state court order rendered in a different action in 1978, and pages thirty-six through forty-two present a letter to a local newspaper and Petitioner's response; all are irrelevant and are improperly in the Appendix.

Rule 21(5) provides that the failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to an understanding of the points requiring consideration will be a sufficient reason for denying the petition. This petition should be dismissed for that reason.

CONCLUSION

In 1971, Petitioner's buildings were found to be unfit for human habitation. Until late 1974, Respondents worked with Petitioner in an attempt to resolve matters short of demolition, but Petitioner failed to repair the properties. Now, over ten years later, the buildings remain unfit for human habitation and are a safety hazard to the community. There is no unique federal issue presented, nor are there issues over which various courts differ. The Petition for Writ of Certiorari should be denied to allow Respondents to adequately protect the health, safety, and welfare of the citizens of the City of Columbia.

Respectfully submitted,

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APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ANNIE MARY TIMMONS, PLAINTIFF,

versus

ROBERT C. ANDREWS, D. REESE WILLIAMS, WILLIAM H. TULLER, GROVER C. KIRBY, CHARLES H. THOMAS, JOE E. WINTER, JOHN T. CAMPBELL and GRAYDON V. OLIVE, DEFENDANTS

COMPLAINT

Civil Action No. 74-2049

1. That Plaintiff herein is a resident of the State of Florida and each of the Defendants is a resident of the State of South Carolina, and the Defendants Robert C. Andrews, D. Reese Williams, William H. Tuller, Grover C. Kirby and Charles H. Thomas, constitute the Board of Zoning Appeals of the City of Columbia; the Defendant Joe E. Winter is the Housing Rehabilitation Officer of the City of Columbia; the Defendant John T. Campbell is the Mayor of the City of Columbia; and the Defendant Graydon V. Olive is the City Manager of the City of Columbia a municipal corporation organized and existing under the laws of the State of South Carolina.

2. A diversity of citizenship exists between the Plaintiff and each of the Defendants and the matter in controversy exceeds the sum of Ten Thousand and no/100 ($10,000.00) Dollars exclusive of interest and costs.

3. This is a proceeding for an injunction and a declaratory judgment to determine a question of actual controversy between the parties as to whether the adoption of the provisions of the Southern Standard Housing Code confers authority upon the Defendants to condemn and demolish buildings within the City of Columbia, whether any such authority applies to buildings not being used as residences, and whether such a condemnation constitutes a

taking without compensation in violation of the State and Federal Constitutions.

4. Plaintiff is the owner of real property located at 1329 Calhoun Street, 2920 Devine Street, 3100 Duncan Street, 3107 Heyward Street, 3104 Monroe Street and 208 Sims Avenue. Such properties have great value although they have been damaged by vandals or common criminals and are currently used for storage of personal property belonging to the Plaintiff and her sister. Plaintiff has undertaken to secure the buildings against unauthorized entry, but such entries have continued although such properties are in well travelled residential sections of the City of Columbia. Plaintiff was heretofore served with a Complaint and an Order providing for demolition and she has appealed and has exhausted her administrative remedies and the Defendants are about to commence demolition of her properties and destruction of the contents. Plaintiff will suffer irrevocable injury if such action is allowed and will be deprived of her property in violation of the State and Federal Constitutions and the Laws of the United States.

WHEREFORE, Plaintiff prays that this Court issue a rule to show cause to the Defendants why a temporary injunction prohibiting this condemnation should not issue, advance this cause on the docket, declare that said ordinance is unconstitutional and constitutes an unlawful taking of Plaintiff's property or in the alternative is not applicable to Plaintiff's properties, enjoin the Defendants from further proceedings and grant her such other and further relief as may be just and equitable, including her costs.

DRAWDY & BEALE,
By: /s/ J. WESLEY DRAWDY,
Attorneys for Plaintiff,
2014 Sumter Street,
Columbia, South Carolina.

Columbia, South Carolina,
December 30, 1974.